MALAYAN BANKING BHD

v.

JIANGNAN ESCALATOR (M) SDN BHD & ORS

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL SUIT NO: 22-91-2000]
28 NOVEMBER 2001

BANKING: *Banks and banking business - Interest - Base lending rate - Variation by bank - Notification to borrower - Whether bank placed specific advertisement in newspapers - Whether newspaper reports can substitute advertisement - Whether borrower served with notice in writing - Whether bank can obtain summary judgment*

CONTRACT: *Agreement to grant credit facilities - Loan agreement - Interest - Base lending rate - Variation by lender - Notification to borrower - Whether lender placed specific advertisement in newspapers - Whether newspaper reports can substitute advertisement - Whether borrower served with notice in writing - Whether lender can obtain summary judgment*

Pursuant to a loan agreement the plaintiff bank granted a RM6.3 million loan facility to the 1st defendant company. The plaintiff subsequently sued for an outstanding balance of RM2,566,587.44 and applied for summary judgment in respect thereof. The senior assistant registrar dismissed the application and the plaintiff appealed. The sole issue that arose for decision was whether the plaintiff had given the 1st defendant proper notice of the variation in its interest rates.

Held:

[1] The newspaper reports concerning interest rates referred to by the plaintiff were merely news items prepared by the journalists of various newspapers. (Such newspaper reports are hearsay unless the journalist concerned affirms an affidavit as to the truth of what he has reported.) The newspaper reports referred to by the plaintiff did **not** come within the type or form of notification envisaged by the loan agreement. The requirement was that the plaintiff informed its borrowers "by placing in one issue of a daily national newspaper a general notice of change … ." This imposed a definite need on the plaintiff to place a **specific advertisement** to the public at large and in particular to its borrowers notifying them of any variation in its interest rates. The loan agreement further required the plaintiff to **serve a notice in writing** on the 1st

defendant informing it of the change in percentage of interest or the interest imposed above the plaintiff's base lending rate. The plaintiff had neither placed the specific advertisement required nor served the necessary notice in writing on the 1st defendant. (p 549 b & e-g)

[Appeal dismissed; summary judgment refused; action set down for trial.]

Case(s) referred to:
Lorrain Esme Osman v. Perwira Affin Bank Bhd (W-02079-96) (unreported) ***(refd)***
Perwira Affin Bank Bhd v. Lorrain Esme Osman [1996] 4 MLJ 656 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 14

For the plaintiff - SS Tan; M/s Wong Lu Peng & Tunku Alina
For the defendants - Anoop Singh; M/s Anoop & See

Reported by Gan Peng Chiang

JUDGMENT

RK Nathan J:

Facts

By way of a letter of offer dated 18 September 1996 and upon the request of the 1st defendant, the plaintiff granted a loan facility amounting to RM6,300,000 upon terms and conditions contained in a loan agreement dated 13 September 1997. The 2nd to 6th defendants were the guarantors. The plaintiff claimed for an outstanding balance of RM2,566,587.44 on the said loan agreement. The defence was filed on 10 April 2000 and the plaintiff took out an O. 14 application for summary judgment on 9 August 2000. Having heard the said application the senior assistant registrar (SAR) dismissed the same with costs. I heard the appeal against this decision on 3 October 2001 and dismissed the same. This is the plaintiff's appeal against my decision.

Findings Of The Court

The only issue raised by the defence related to the question of the variation of interest.

The variation of interest and/or commission cl. 6.07 of the loan agreement reads as follows:

(a) in respect of the Base Lending Rate of the Lender by placing in one issue of a daily national newspaper a general notice of change of the Base Lending Rate of the Lender addressed to the Public generally.

The defendant denied that any notice of variation of the interest rate had been given. Whilst acknowledging that there indeed was variation of the interest rate the plaintiff responded to the non-service of the notice of variation by referring to four general notices reported in the newspapers.

To my mind the said reports were news items reported by various reporters of various newspapers. Numerous case authorities will show that such newspaper report is hearsay evidence unless the reporter himself affirms an affidavit as to the truth of his reporting. In *Perwira Affin Bank Bhd v. Lorrain Esme Osman* [1996] 4 MLJ 656 whilst rejecting a newspaper report without sufficient authentication, I said at p. 662 as follows:

> In any event since I am of the view that newspaper reports by themselves are insufficient to conclusively establish a fact in dispute without any other supporting documents or sources, and since Anad Krishnan had unequivocally stated that the truth of matters stated in his affidavit was based on the newspaper report, I hold that his affidavit does not support the appellant's case that he was not in this country at the material time.

The appeal against this decision (*Lorrain Esme Osman v. Perwira Affin Bank Bhd* W-02-79-96) was struck out on 19 February 2001 by the Court of Appeal.

In the case before me what was shown by the plaintiff in its affidavit in support were reports published in various newspapers of what their respective reporters had written. I do not think that cl. 6.07 envisages such a crude form of notification. The requirement is that the lender namely the plaintiff informs the borrower "by placing in one issue of a daily national newspaper a general notice of change ..." This, in my view, imposes upon the plaintiff the need to place a specific advertisement to the public at large and in particular to its borrowers, notifying the change. Further the requirement of sub-cl. (b) is even more stringent. Here there is a need to serve a notice in writing on the borrower, of the change in percentage of interest or the interest imposed, above the base lending rate of the lender. In this case the defendants have denied receipt of any notice and this has not been challenged by the plaintiff.

Having considered the submissions of both counsel I held that on both issues (a) and (b) of cl. 6.07 the plaintiff had failed to satisfy the court of its compliance. In the circumstances I dismissed the appeal and set the case down for case management to ready it for trial.